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# *County of San Diego*

## **CITIZENS' LAW ENFORCEMENT REVIEW BOARD**

1168 UNION STREET, SUITE 400, SAN DIEGO, CA 92101-3819

TELEPHONE: (619) 238-6776 FAX: (619) 238-6775

[www.sdcounty.ca.gov/clerb](http://www.sdcounty.ca.gov/clerb)

### **REGULAR MEETING AGENDA**

### **TUESDAY, NOVEMBER 8, 2011, 5:30 P.M.**

### **San Diego County Administration Center**

### **1600 Pacific Highway, Room 302/303, San Diego, 92101**

**The public portion of the meeting must be concluded in time to allow the public to vacate the building by 6:00 p.m.**  
*(Free parking is available on the street or pay Ace Parking on the south side. Enter at the north entrance.)*

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

#### **DISABLED ACCESS TO MEETING**

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

#### **1. ROLL CALL**

#### **2. MINUTES APPROVAL**

- a) Minutes of the October 2011 Regular Meeting (*Attachment A*)

#### **3. PRESENTATION / TRAINING**

- a) 2011 National Association for Civilian Oversight of Law Enforcement Summary
- b) CLERB Staff Business Process Reengineering Report

#### **4. EXECUTIVE OFFICER'S REPORT**

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

#### **5. BOARD MEMBER COMMENTS**

#### **6. NEW BUSINESS**

*-continued on next page-*

- a) Nomination Committee for the 2012 CLERB Executive Board

## 7. UNFINISHED BUSINESS

- a) N/A

## 8. PUBLIC COMMENTS

This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

## 9. CLOSED SESSION

- a) **Officer Discipline Recommendation** - Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation.
- CLERB Sustained Findings: Cases **10-071, 10-074**
- b) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

## **CASES FOR SUMMARY HEARING (9)**

### **ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE**

#### **10-041**

1. Illegal Search & Seizure – Deputy 1 accessed the complainant's property through a locked gate without permission and/or a warrant.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. False Arrest – Deputy 1 arrested the complainant for making terrorist threats.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Discourtesy – Deputy 1 inappropriately talked and laughed about a year long prison term for the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure – Deputy 1 read the complainant his Miranda rights after he was interrogated.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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## **10-072**

1. Misconduct/Procedure - Deputy 5 opened complainant's legal mail on April 1, 2010.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Intimidation - Deputy 6 and Deputy 9 dissuaded the complainant from filing grievance or complaint when Deputy 6 and Deputy 9 took the complainant to the rec yard.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure - Deputy 7 told the complainant he would be arrested if he submitted any more grievances on April 1, 2010.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure - Deputy 2 revoked the complainant's Pro Per Law Library privileges without notice and without due process about May 28, 2010.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure - Deputy 2 advised the complainant he would not be allowed to view discovery documents because he was not in a Pro Per status.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Discrimination/Racial - Deputy 4 is promoting, requiring, instituting, condoning, and forcing race based segregation and discrimination at the San Diego Central Jail.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Misconduct/Procedure - Deputy 3 opened complainant's legal mail on June 23, 2010.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

8. Misconduct/Procedure - Deputy 8 attempted to have complainant assaulted by making an announcement over the loud speaker on June 23, 2010.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

9. Misconduct/Procedure - Deputy 8 tried to dissuade the complainant from filing grievances on June 23, 2010.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

10. Illegal Search or Seizure - Deputy 1 tampered with and disposed of the complainant's legal paperwork.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

11. Misconduct/Procedure - Deputy 1 disposed of complainant's American Curves magazine pictures.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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## **10-077**

1. Criminal Conduct – Deputy 2 “tailgated” the complainant’s motorcycle for approximately a ¼ of a mile on Interstate 15.

Recommended Finding: Not Sustained

Rationale: While en route to Incident #S8568991, Deputy 2 initially followed the complainant at a distance of 4-5 car lengths. The complainant remained in the #1 lane, so Deputy 2 was forced to pass him in lane #2, as he continued en route to an emergency call. Prior to passing, Deputy 2 stated he was never closer than 2 car lengths to the complainant. The involved parties offered different accounts regarding distancing and there was insufficient evidence to either prove or disprove Deputy 2 tailgated the complainant.

2. Criminal Conduct – Deputy 2 followed the complainant’s motorcycle for approximately a ¼ of a mile on Interstate 15, while speeding.

Recommended Finding: Sustained

Rationale: The posted speed limit on Interstate 15 is 70 mph. While en route to Incident #S8568991, Deputy 2 initially followed the complainant at an approximate speed of 80 mph, while driving with “due regard” to other traffic. This was not a Code 3 response. As the complainant “pulled away,” Deputy 2 “paced” (a police vehicle's speed is matched to that of a target vehicle, and the calibrated speedometer of the patrol car used to infer the other vehicle's speed) the complainant’s speed between 88 and 90 mph. Automatic Vehicle Locator records document the excessive speed. Sheriff’s Policy 2.35, Operation of Vehicles states that employees shall obey all laws of the state and all Departmental orders pertaining to such operation. While the Sheriff’s Patrol Manual allows discretion it also mandates compliance with Sheriff’s Department policy. The evidence supports the allegation and the conduct was not justified.

3. Illegal Search & Seizure – Deputies 1 and/or 2 initiated a traffic stop and detained the complainant for over 40 minutes without probable cause.

Recommended Finding: Action Justified

Rationale: Deputy 2 paced the complainant exceeding the speed limit, which the complainant denies. Deputy 1 initiated the traffic stop upon observing the complainant gesturing and waving his hand angrily. Due to the complainant's belligerent behavior and non-compliance, Deputy 2 called for backup. CAD records indicated the detention was less than 25 minutes. The complainant's behavior, coupled with his initial refusal to submit a valid driver's license and refusal to sign a ticket, could have resulted in an additional charge. The evidence shows the alleged act did occur and was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 2 wrote the complainant a speeding citation without knowing how fast he was traveling (and seemingly for the complainant questioning the deputies' actions.)

Recommended Finding: Action Justified

Rationale: Deputy 2 paced the complainant's speed between 70 and 90 mph at various intervals. Automatic Vehicle Locator records corroborated this information. Deputy 2 described the complainant's explosive behavior, but did not cite it as a factor in issuing the citation. The complainant had the ability to dispute the citation through traffic court. The evidence shows the alleged act or conduct was lawful, justified and proper.

5. Misconduct/Intimidation – Deputy 2 told the complainant, "I'll just ruin your career."

Recommended Finding: Not Sustained

Rationale: The complainant stated he was a federal officer and told deputies they should have activated lights and siren in an attempt to move drivers over. Deputy 2 described the complainant's behavior as belligerent, boisterous, confrontational, and explosive. Deputy 2 informed the complainant that his behavior was improper, could warrant contact with a supervisor, and could possibly jeopardize a law enforcement career. The complainant failed to produce verification of his employment status, but the Sheriff's Department verified his end of service with the military was three months prior to this incident. The complainant also failed to produce an alleged audio recording of the contact. The complainant and Deputy 2 offered varied accounts of what was said and there was insufficient evidence to either prove or disprove the allegation.

6. Misconduct/Procedure – Deputy 3 would not listen to the complainant because he was told, "You're just trying to fight the ticket."

Recommended Finding: Not Sustained

Rationale: Deputy 3 stated he spoke with the complainant for 19 minutes and his chief complaint was that he was tailgated and had been in a previous accident on the highway for the same reason. The complainant said there was no probable cause for a stop, because he was only going 65 mph. The complainant admittedly used a lot of profanity, which escalated the situation. Details of Deputy 3's contact with the complainant are contained in the Communication records. There is insufficient evidence to either prove or disprove the allegation.

7. Misconduct/Procedure – Deputy 3 failed to report to dispatch as being on scene at this incident.

Recommended Finding: Action Justified

Rationale: The complainant stated he contacted the Communications Center and was told by a dispatcher there were three Sheriff's vehicles on scene. A recording of the complainant's call corroborated that the complainant spoke with Dispatcher 92 who stated, "it only shows 3," but she also said she was unsure and he was referred to Deputy 3. Deputies 1 and 2 initiated the traffic stop and Deputies 3 and 4 responded to their request for backup. CAD records document 1, 2 and 4 on scene. There is no requirement for Deputy 3 to put himself out on the call, which is why CAD records do not include him. Shift sergeants, as well as all other law enforcement officials, routinely show up to scenes to observe and/or assist for officer safety purposes. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

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**10-094**

1. Misconduct/Discourtesy – Deputy 3 made a discourteous remark to the complainant when he said he was “a natural at causing problems,” and that he was “really good at it.”

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure - Deputy 3 used profanity when he told the complaint to take his “shit and get back in [his] fucking cell.”

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Intimidation – Deputy 3 made a discourteous remark to the complainant when he said, “O’ is that how it is, you submit a fucking grievance on me. Who do you think you are. You’re gonna get it. You fucked with the wrong man.” Deputy 3 told the complainant “I told you I don’t hold grudges,” and “you’re’ gonna be sorry you little shit.” “Why did you submit a grievance?”

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Harassment – Deputy 3 harassed the complainant on two occasions, which the complainant indicates is “stalking.”

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Deputy 2 refused to process a grievance in accordance with Department procedures.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Discourtesy – Deputy 4 made oral statements slandering and defaming the complainant’s character.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Illegal Search/Seizure: Deputy 1 opened the complainant’s cell, against his orders, resulting in the theft of two items of personal property.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

8. Misconduct/Procedure: Deputy 1 failed to process complainant’s grievance as required by Department Policy and Procedures.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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**10-095**

1. Misconduct/Procedure – Deputy 1 failed to correct a felony case record in June of 2009, resulting in the complainant being misidentified and falsely arrested.

Recommended Finding: Summary Dismissal

Rationale: On September 29, 2010, the complainant submitted a signed complaint concerning actions that occurred on August 25, 2009 and September 14, 2009. There are no exceptions that apply to this event for the complainant not responding within one-year of the date of the incident giving rise to the complaint. CLERB does not have authority to investigate this complaint based upon CLERB Rules & Regulations, 4.4 Citizen Complaints: Jurisdiction.

2. False Arrest – On September 13, 2009 the complainant was arrested by Montclair Police Department and extradited to San Diego County for an invalid warrant hold.

Recommended Finding: Summary Dismissal

Rationale: On September 29, 2010, the complainant submitted a signed complaint concerning an incident that occurred on September 13, 2009. There are no exceptions that apply to this event for the complainant not responding within one-year of the date of the incident giving rise to the complaint. CLERB does not have authority to investigate this complaint based upon CLERB Rules & Regulations, 4.4 Citizen Complaints: Jurisdiction.

3. False Arrest – On September 6, 2010 the complainant was arrested by San Bernardino Police Department on an invalid outstanding warrant.

Recommended Finding: Summary Dismissal

Rationale: On September 29, 2010, the complainant submitted a signed complaint concerning an incident that occurred on September 6, 2010. The complainant was arrested by San Bernardino Police Department for possession of a controlled substance and during the arrest it was revealed that an active bench warrant had been issued by South Bay Superior Court associated with the arrest of the person that had stolen the complainant's identity in May 2009. The complainant did not file an identity theft report until after she was arrested in September 2009. A follow-up investigation was submitted to the District Attorney's Office for review; however, the District Attorney's Office declined to issue charges against the person stealing the complainant's identification. The California Identity Theft Data Base, established to help victims of identity theft wrongfully accused or associated with crimes, requires victims of identity theft to request a Certificate of Identity Theft by petition through the California Courts. District Attorney guidelines also provide the victim of identity theft with direction to correct inaccurate warrants. Completion of the Crime Report in September 2009 completed the San Diego Sheriff's Department's corrective action with regard to the bench warrant issued by South Bay Superior Court. The incident involved the complainant and the California Superior Courts system over which CLERB has no authority. The Review Board lacks jurisdiction based upon CLERB Rules and Regulations, 4.1 Citizen Complaints: Authority. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340 340.9 of the San Diego County Administrative Code), the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department... The complainant has been referred to the State of California Department of Justice, Office of the Attorney General, for registry into the California Identity Theft Data Base.

**POLICY RECOMMENDATION:**

It is recommended that the San Diego Sheriff's Department review and issue an up-to-date Training Bulletin addressing Identity Theft (Report Writing and Investigative Procedures). Procedures should include appropriate reference to Department Policies and Procedures and the State of California's Identity Theft Data Base to assist victims of criminal

identity theft who may have been wrongfully accused or associated with crimes.

It is recommended that San Diego County Sheriff's Department review and update the Identity Theft Quick Reference Guide (SO-08) to include information related to criminal identity theft. Last revised in May 2010 the Guide offers a significant amount of information and guidance for victims whose personal information has been used by others to purchase goods or services, but provides no guidance or direction for those that experience criminal identity theft.

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#### **10-101**

1. Illegal Search & Seizure - Deputies 1 and 3 used an illegal search warrant to gain entrance into the complainant's home and search his property.

Recommended Finding: Action Justified

Rationale: Deputies 1 and 3 were assigned as members of a multi-agency task force exercising a properly secured Search Warrant of the complainant's property issued by the Superior Court of the State of California, County of San Diego. Deputies 1 and 3 acted under the authority of the task force leader and the evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputies 1 and 3 refused to show official identification and/or identify themselves when asked by the complainant.

Recommended Finding: Action Justified

Rationale: Deputies 1 and 3 were assigned as members of a multi-agency task force. The task force Law Enforcement Coordinator responded to the complainant with his own name and contact information on behalf of the entire task force rather than providing individual names and identification. Additionally, the Department of Motor Vehicles Case Agent provided name and contact information to the complainant. Deputies 1 and 3 acted under the authority of the task force leader and the evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

3. False Report – Deputies 1 and 3 “lied” on the application to secure a search warrant.

Recommended Finding: Unfounded

Rationale: Deputies 1 and 3 did not provide any information to support probable cause in the Affidavit for Search Warrant. The Affidavit for Search Warrant was prepared by the Case Agent, a DMV Investigator, based on reports from the Better Business Bureau and the Case Agent personal interviews. The evidence shows that Deputies 1 and 3 did not submit documentation to secure the search warrant and that the alleged act did not occur.

4. False Arrest – Deputy 2 arrested the complainant on October 24, 2010 for crimes he claims he did not commit.

Recommended Finding: Action Justified

Rationale: Deputy 2 arrested the complainant on October 24, 2010. The complainant had been arraigned on October 12, 2010, at which time the court ordered him to submit himself for booking and release on October 24, 2010. The complainant voluntarily reported to San Diego Central Jail on Sunday, October 24, 2010 and was booked and released. The evidence shows that the alleged act did occur but was lawful, justified and proper.

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#### **10-102**

1. Illegal Search & Seizure – Probation Officer 1 used an illegal search warrant to gain entrance into the complainant's home and search his property.

Recommended Finding: Action Justified

Rationale: Probation Officer 1 was assigned as a member of a multi-agency task force exercising a properly



secured Search Warrant of the complainant's property issued by the Superior Court of the State of California, County of San Diego, on September 14, 2010. Probation Officer 1 acted under the authority of the task force leader and the evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Probation Officer 1 refused to show official identification and/or identify himself when asked by the complainant.

Recommended Finding: Action Justified

Rationale: Probation Officer 1 was assigned as a member of a multi-agency task force. The task force Law Enforcement Coordinator responded to the complainant with his own name and contact information on behalf of the entire task force rather than providing individual names and identification. Additionally, the Department of Motor Vehicles Case Agent provided name and contact information to the complainant. Probation Officer 1 acted under the authority of the task force leader and the evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

3. False Report – Probation Officer 1 “lied” on the application to secure a search warrant.

Recommended Finding: Unfounded

Rationale: Probation Officer 1 did not provide any information to support probable cause in the Affidavit for Search Warrant. The Affidavit for Search Warrant was prepared by the Case Agent, a DMV Investigator, based on reports from the Better Business Bureau and personal interviews. The evidence shows that Probation Officer 1 did not submit documentation to secure the search warrant and that the alleged act did not occur.

4. False Arrest – Probation Officer 1 arrested the complainant for crimes he claims he did not commit.

Recommended Finding: Unfounded

Rationale: Probation Officer 1 was not present when the complainant was taken into custody. The complainant had been arraigned on October 12, 2010, at which time the court ordered him to submit himself for booking and release on October 24, 2010. The complainant voluntarily reported to San Diego Central Jail on Sunday, October 24, 2010 was booked and released. The evidence shows that Probation Officer 1 was not involved in the arrest and the alleged act did not occur.

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## **10-103**

1. Criminal Conduct – Deputy 1 detained the complainant for three days without due process.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Discourtesy – Deputy 1 told the complainant to “roll-up” explaining, “get your fucking shit cause you're leaving.”

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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**11-113**

1. Misconduct/Medical – Deputy 1 did not provide Inmate Molina with proper medical care.

Recommended Finding: Summary Dismissal

Rationale: The out-of-state complainant called on behalf of her nephew, an inmate at the San Diego Central Jail (SDCJ), who alleged improper medical treatment. On October 4, 2011, the aggrieved contacted the undersigned and stated, “I have no issue with the deputies” and confirmed that his complaint was limited strictly to medical issues. The Review Board lacks jurisdiction and this matter is referred to the Sheriff’s Department.

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